

**Notice of Allowability**

Application No.

10/789,372

Examiner

Katherine M. Dowe

Applicant(s)

MUELLER ET AL.

Art Unit

3734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment filed 7/19/2007.
2. ☒ The allowed claim(s) is/are 1,4-7,11,13-15,17-32,34,35 and 38.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some\* c) ☐ None of the:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08), Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

### **EXAMINER'S AMENDMENT**

1. The following is a complete response to the amendment filed 7/19/2007.
2. Applicant's arguments, filed 7/19/2007, with respect to the rejection of claim 1 as being anticipated by King et al. (US 3,874,388) have been fully considered and are persuasive. The rejection of claims 1, 4-11, 13-15, and 17-30 has been withdrawn. Accordingly, the finality has additionally been withdrawn.

3. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Douglas McAllister on 7/31/07.

4. The application has been amended as follows:

#### **IN THE CLAIMS**

Cancel claims 8-10

Claim 1 line 2 after "provide bearing" delete [areas and/or hold bearing]

Claim 1 line 7 after "base part" insert --at only one end of the closure device--

Claim 1 line 11 after "wings" delete [at least partially overlap] and replace with --have partially overlapping contact with--

Art Unit: 3734

Claim 1 line 12 after "base part" insert --and the arrangement of the wings in the flapped-in position has a circumference which is identical to or smaller than that of the base part--

Claim 13 line 2 after "form the bearing areas" delete [and/or hold the bearing areas]

Claim 25 line 2 after "areas" insert --on the base part--

Claim 31 line 1 at start of line delete [Applicator device for a closure device, said closure device] and replace with --A closure system, said closure system--

Claim 31 between lines 1 and 2 insert

--a closure device; and

an applicator device for holding and positioning said closure device;

a trocar sheath adapted to accept the applicator device and the closure device;

said closure device comprising:--

Claim 31 line 2 after "plurality of" add --separate--

Claim 31 line 2 after "provide bearing areas" delete [and/or hold bearing areas]

Claim 31 delete lines 5-6 and replace with

--wherein:

each of the wings are held by means of a respective film hinged joint for

swiveling movement on the base part at only one end of the closure device;

the joints are fixed on an upper surface of the base part, said upper surface

Art Unit: 3734

facing the tissue when bearing areas bear on the tissue; and  
the wings are arranged for swiveling movement on the base part such that in a flapped-in position neighboring wings have partially overlapping contact with one another such that no part of the wings protrudes laterally over the base part and the arrangement of the wings in the flapped-in position has a circumference which is identical to or smaller than that of the base part;--

Claim 31 line delete line 9

Claim 31 line 11 after "from" delete [a] and replace with --the--

5. The following is an examiner's statement of reasons for allowance: The prior art of record does not teach or suggest a closure device having a plurality of wings connected to an upper side of a base part with respective film hinged joints *at only one end* such that in a flapped-in position, or delivery configuration, neighboring wings *have partially overlapping contact* with one another and the arrangement of the wings has a circumference identical to or smaller than that of the base part.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."


**Conclusion**


6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Cauthen (US 7,052,516), Kohl (US 3,397,699), Janese (5,053,046), and Hardinge (US 4,276,659).

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Katherine M. Dowe whose telephone number is (571) 272-3201. The examiner can normally be reached on M-F 8:30am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Hayes can be reached on (571) 272-4959. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Katherine Dowe   
July 30, 2007

  
MICHAEL J. HAYES  
SUPERVISORY PATENT EXAMINER